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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application No.	09/660,811
Filing Date	September 13, 2000
First Named Inventor	Mark S. Knighton
Art Unit	2636
Examiner Name	George A. Bugg
Total Number of Pages in This Submission	13
Attorney Docket Number	4956P003

ENCLOSURES ***(check all that apply)***

- [X] Fee Transmittal Form
  - [ ] Fee Attached
- [ ] Amendment / Response
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
  - [ ] PTO/SB/08
- [ ] Certified Copy of Priority Document(s)
- [ ] Response to Missing Parts/ Incomplete Application
  - [ ] Basic Filing Fee
  - [ ] Declaration/POA
  - [ ] Response to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
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- [ ] CD, Number of CD(s)
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- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [X] Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- [ ] Proprietary Information
- [ ] Status Letter
- [X] Other Enclosure(s) *(please identify below):*

Return receipt postcard

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Thomas M. Coester, Reg. No. 39,637 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Signature	Thomas Coester
Date	February 17, 2006

CERTIFICATE OF MAILING/TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Typed or printed name	Jean Svoboda		
Signature		Date	February 17, 2006

Based on PTO/SB/21 (09-04) as modified by Blakely, Sokoloff, Taylor & Zafman (wlr) 11/30/2005.
SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

FEE TRANSMITTAL for FY 2005

Patent fees are subject to annual revision.

☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT ($)

Complete if Known	
Application Number	09/660,811
Filing Date	September 13, 2000
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Art Unit	2636
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METHOD OF PAYMENT *(check all that apply)*

☐ Check ☐ Credit card ☐ Money Order ☐ None ☐ Other (please identify): _____

☒ Deposit Account Deposit Account Number: 02-2666 Deposit Account Name: Blakely, Sokoloff, Taylor & Zafman LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

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FEE CALCULATION

Large Entity Fee Code	Large Entity Fee ($)	Small Entity Fee Code	Small Entity Fee ($)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet.	
2053	130	2053	130	Non-English specification	
1251	120	2251	60	Extension for reply within first month	
1252	450	2252	225	Extension for reply within second month	
1253	1,020	2253	510	Extension for reply within third month	
1254	1,590	2254	795	Extension for reply within fourth month	
1255	2,160	2255	1,080	Extension for reply within fifth month	
1401	500	2401	250	Notice of Appeal	
1402	500	2402	250	Filing a brief in support of an appeal	
1403	1,000	2403	500	Request for oral hearing	
1451	1,510	2451	1,510	Petition to institute a public use proceeding	
1460	130	2460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
1809	790	1809	395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.129(b))	

Other fee (specify) _____

SUBTOTAL (2) ($)

SUBMITTED BY *Complete (if applicable)*

Name (Print/Type)	Thomas M. Coester	Registration No. (Attorney/Agent)	39,637	Telephone	(310) 207-3800
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Based on PTO/SB/17 (12-04) as modified by Blakely, Sokoloff, Taylor & Zafman (wlr) 12/15/2004.
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Docket No.: 4956.P003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Mark S. Knighton, et. al.

Application No.: 09/660,811

Filed: September 13, 2000

Title: **DIGITAL IMAGING SYSTEM HAVING DISTRIBUTION CONTROLLED OVER A DISTRIBUTED NETWORK**

Art Group: 2613

Examiner: George A. Bugg

REPLY BRIEF

Mail Stop Appeal Briefs - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant, (hereinafter "Appellant") submits, one copy of the following Reply Brief pursuant to 37 C.F.R. § 41.41 for consideration by the Board of Patent Appeals and Interferences. Please charge any additional amount due or credit any overpayment to deposit Account No. 02-2666.

ARGUMENT

In the Examiner's Answer ("Answer") to Appellant's Appeal Brief ("Brief") mailed on 10/7/2005, the Examiner maintains his rejection of claims 1-4, 8-15, 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over Pito (USPN 5,831,621) in view of Migdal (USPN 5,991,437), claims 5-7, 16-17 and 30 under 35 U.S.C. §103(a) as being unpatentable over Pito in view of Migdal and further in view of Vellacott (International Publication No. WO 96/02106), Claims 27-29 under 35 U.S.C. §103(a) as being unpatentable over Pito in view of Truc (USPN 6,421,079), Claims 20-26 under 35 U.S.C. §103(a) as being unpatentable over Murphy (USPN 5,799,082), issued in the Final Office Action ("Action").

Appellant respectfully submits, for at least the reasons previously set forth and those herein, neither Pito nor Migdal teach an orientation fixture and a digitizer as physically independent units without a predefined relative position nor do they teach an orientation fixture and digitizer as integrally coupled. Pito and Migdal further fail to teach at least one of a digitizer and orientation fixture capable of automatically locating the relative position of the other. The references further fail to teach a self contained power source. Pito does not teach automatic calibration. Pito does not teach a self contained power source. Pito does not teach communicating over a wireless link or transmitting data remotely.

Neither Vellacott nor Truc teach an orientation fixture and digitizer as physically independent units without a predefined relative position. Vellacott does not teach a wireless link between a digitizer and an orientation fixture. Truc does not teach a data analyzer to identify points of interest in the data collected wherein the digitizer and orientation fixture automatically rescan a portion of the object corresponding to a point of interest identified and a three-dimensional model of a portion of the object is adjusted to improve quality of data previously captured corresponding to the point of interest based on the rescan.

Murphy does not teach receiving a request over a distributed network to authorize operation of a lockable image capture system at a node remote from the image capture system and sending an authorization data to the image capture system across a distributed network such that the image capture system is unlocked and enabled to capture an image. Murphy does not teach reprogramming a reconfigurable array of logic of the image capture system from a remote

node. Murphy further fails to teach allowing access to captured image data upon receipt of the authorization from a remote node on the distributed network.

I. Neither Pito nor Migdal Teach "the orientation fixture and the digitizer are physically independent units without a predefined relative position"

Appellant respectfully disagrees with the Examiners determination that Figure 1 of Pito teaches the orientation fixture and digitizer as physically independent units without predefined relative positions as recited in Claim 1. See Answer, page 11. The Examiner alleges the failure of Figure 1 to illustrate a connection between the digitizer and orientation fixture discloses "physically independent" units. See Answer, page 11.

Although drawings and pictures may be used as prior art "the picture must show all the claimed structural features and how they are put together." See MPEP §2125. Appellant does not understand how a schematic illustrates only a scanner 10 and turntable 14 as a cube and a disk respectively, shows "all the claimed structural features and how they are put together" as is required of a drawing used as prior art. Moreover, it is clear from Figure 1 that the absence of features from the schematic would not suggest to one of ordinary skill in the art the features do not exist. For example, Pito teaches the turntable 14 is a "computer controlled turntable 14." See Pito, col. 5, lines 31-32. Turntable 14 must therefore be connected to a computer otherwise it could not operate. Presumably turntable 14 further includes some sort of support structure and motor to turn the table. Neither the computer, connection between the computer and turntable 14, support structure or motor are illustrated in Figure 1. Instead, turntable 14 is shown in the schematic as simply a disk suspended in mid air. Similarly, although scanner 10 includes many components, scanner 10 is illustrated as merely a box suspended in mid air. Certainly, the absence of these features from the figure is not intended to suggest they do not exist and one of ordinary skill in the art would not interpret Figure 1 as such. Moreover, Appellant expressly defines the term "physically independent" to mean that no mechanical or wired electrical connection exists between the physically independent units during operation. See Page 5, lines 1-3. One of ordinary skill in the art would not understand the silence of the schematic of Figure 1 as to the connection between the scanner 10 and turntable 14 to teach "physically independent units without a predetermined relative position" as defined in the instant application.

Moreover, Appellant disagrees with the Examiner's suggestion that col. 7, lines 38-53 of Migdal states the two units "find" one another through a calibration technique and that the calibration technique taught in col. 13, lines 10-32 of Migdal does not differ from Appellant's and therefore Migdal teaches a digitizer and orientation fixture having no predefined relative position as recited in Claim 1. See Answer, pages 11-12. Appellant has reviewed these portions of Migdal and nowhere is the positioning between a digitizer and orientation fixture discussed much less that the calibration technique allows a digitizer and orientation fixture to "find" one another. Instead, col. 7, lines 38-53 of Migdal merely describes an exemplary 3D object 10 having geometric shapes as illustrated in Figure 2a for use in calibration. Col. 13, lines 10-32 of Migdal describes how the calibration procedure may be used to identify parameters for the location of plane of light 178 and the position of the mirror of the light positioner 112. See Migdal, col. 13, lines 15-20. Appellant does not understand how the above-described technique may be characterized by the Examiner as a technique for acquiring the orientation fixture as claimed when Migdal fails to even discuss the calibration technique in the context of the digitizer and orientation fixture. Moreover, a description of the geometric shapes of a 3D object and the positioning of a light plane or mirror certainly would not suggest to one of ordinary skill in the art a digitizer and orientation fixture finding one another or having no predefined relative position as suggested by the Examiner.

Appellant further submits, the Examiner's leap from a determination that the calibration technique of Migdal is the same as that described on page 5, line 19-page 6, line 14 of Appellant's specification to a conclusion that Migdal therefore must disclose an orientation fixture and scanner having no predefined relative position as recited in Claim 1 is improper. See Answer, page 12. As the Examiner is no doubt aware, each and every element of Appellant's claims, not the specification, must be taught or suggested by the references. Thus, even if it were possible to find that a calibration technique of Migdal and a technique described in Appellant's specification are similar, this is not the element recited in claim 1. Rather, what is claimed in Claim 1 is an orientation fixture and digitizer as physically independent units without a predefined relative position. Thus, for at least these reasons, the Examiner has failed to show the references teach or suggest the orientation fixture and digitizer as physically independent units without predefined relative positions as recited in Claim 1.

In view of the foregoing, it is respectfully requested that the rejection to the claims on this basis be overturned.

II. Pito Does not Teach the Triangulation Technique Allows the Digitizer or Orientation Fixture to Locate or Acquire the other

Appellant respectfully disagrees with the Examiner's determination that the triangulation technique of Pito calculates the distance from the scanner to the orientation fixture and is therefore equivalent to the digitizer or orientation fixture automatically locating the relative position of the other as recited in Claim 2. See Answer, page 13.

As discussed in Appellant's Brief, Pito does not teach the triangulation technique is used by one of the digitizer or orientation fixture to automatically locate the relative position of the other. Instead, Pito suggests the triangulation technique is used by the scanner 10 to measure range data with respect to an object surface where scanner 10 is positioned at some point on a circle whose center coincides with that of turntable 14. See Pito, col. 5, lines 34-39, lines 49-67. Thus, Pito suggests the scanner is prepositioned such that it is directed at the center of the turntable before the triangulation technique is used. See Pito, col. 5, lines 35-39. Accordingly, one of ordinary skill in the art would not understand the scanner of Pito as locating the turntable using triangulation.

It is therefore respectfully requested that the rejection of the claims on this basis be overturned.

III. Appellant's "self contained power source" and "integrally coupled" Digitizer and Orientation Fixture May not Be Inferred from a Teaching of Portability

Appellant respectfully disagrees with the Examiner's determination that a portable system as suggested in Migdal infers the use of a self contained power source as recited in Claims 8, 9 and 18 and an integrally coupled digitizer and orientation fixture as recited in Claim 13. See Answer, pages 16-18.

Nowhere within Migdal is it suggested that portability is achieved by incorporating a self contained power source within the digitizer or orientation fixture. Nowhere within Migdal is it suggested portability is achieved by integrally coupling the digitizer and orientation fixture into a single unit. The Examiner further fails to provide any documentary evidence in support of his inference that portability would be understood to mean an integral unit or one containing a self contained power source. Thus, it appears the conclusion is based on the Examiner's conjecture alone. Such a basis is erroneous as a matter of law.

Moreover, the Examiner's conclusion is erroneous as it loses site of the elements expressly recited in the claims, namely "a self contained power source (Claims 8, 9 and 18) and an "integrally coupled" digitizer and orientation fixture (Claim 13). Nowhere within these claims is the language "portable scanning system" used. Accordingly, a mere disclosure of a portable system does not teach or suggest each of the elements recited in Claims 8, 9, 13 and 18.

Lastly, the Examiner alleges in response to Appellant's arguments in regard to Claim 13 that Migdal may not be relied upon to teach both independent units and integrally coupled units, that many inventions have been made portable wherein all components are combined in a single unit and not portable when the components are not combined thus it is possible for a reference to teach both and "the Migdal reference does just that." See Answer, page 18. Appellant respectfully disagrees.

The Examiner has not pointed to any portion of Migdal teaching both portable and non-portable configurations where the components are combined in a single unit to form a portable unit and not combined to form a non-portable unit. Instead the Examiner himself contemplates these modifications of Migdal based on nothing more than Migdal's statement that "the system and method could enable more flexible scanning systems to be developed, such as portable scanning systems." See Migdal, col. 4, lines 28-30. Since nowhere within Migdal is a portable or non-portable system defined in the manner suggested by the Examiner found, Migdal is not an invention which teaches both a combined and separated configuration to achieve a portable or non-portable system as alleged by the Examiner. Thus, for at least the foregoing reasons, the references fail to teach or suggest a self contained power source as recited in Claims 8, 9 and 18 and an integrally coupled digitizer and orientation fixture as recited in Claim 13.

It is therefore respectfully requested that the rejection of the claims on this basis be overturned.

IV. Geometric Shapes May not Be Characterized as Appellant's Claimed "localized energy source" and "distinctive feature" to Allow the digitizer to Acquire the Orientation Fixture

Appellant disagrees with the Examiner's reliance on Migdal, col. 7, lines 38-53 to teach the use of a triangulation technique to automatically locate a relative position of the orientation fixture and to further conclude that whether using a localized energy source or a geometric shape as discussed in Migdal, the two units are capable of finding each other, or acquiring each other as required by Claims 10 and 11. See Answer, page 17.

As previously discussed, this portion of Migdal does not discuss positioning between a digitizer and orientation fixture much less automatically locating the relative position of the orientation fixture. Instead, col. 7, lines 38-53 of Migdal merely describes an exemplary 3D object 10 having geometric shapes as illustrated in Figure 2a for use in calibration. Appellant does not understand how the above-described object may be characterized by the Examiner as a technique for acquiring the orientation fixture as claimed.

Moreover, Claims 10 requires an orientation fixture comprising a distinctive feature that permits the digitizer to acquire the orientation fixture by scanning an area for the distinctive feature and Claim 11 recites an orientation fixture comprising a localized energy source that permits the digitizer to acquire the orientation fixture. Migdal teaches that the 3D object has set geometric patterns such that it may be scanned by the scanner to calibrate the system. See Migdal, col. 7, lines 15-20. Migdal teaches that the 3D object may be any spherical object with a reliable surface such as a plastic sphere, ball or even a lamp shade. See Migdal, col. 7, lines 62-67. Migdal does not suggest the object permits the digitizer to acquire the orientation fixture by scanning an area for the object. Instead, it appears the object is only useful for calibration after the digitizer is positioned relative to the orientation fixture and the object is scanned by the scanner. See Migdal, col. 7, lines 15-20. Moreover, a plastic sphere, ball or lamp shade is not a "distinctive feature" (Claim 10) or "energy source" (Claim 11) of the orientation fixture as claimed. Thus, for at least the foregoing reasons, neither Migdal nor Pito further teach the

distinctive feature or localized energy source that permits the digitizer to acquire the orientation fixture as recited in Claims 10 and 11 respectively.

It is therefore respectfully requested that the rejection of the claims on this basis be overturned.

V. Neither Official Notice nor Murphy May Be Relied upon to Teach Appellant's Claimed Lockable Image Capture System

Appellant respectfully disagrees with the Examiner's indication in the Answer that although Murphy fails to teach unlocking an image-capturing system as recited in Claims 20 and 23, the disclosed frame lock mechanism serves the same purpose (Official Notice). See Answer, page 10.

Appellant respectfully submits, reliance on Official Notice to support an Examiner's conclusion without documentary evidence is rarely appropriate where an application is under a final rejection and not appropriate where the fact is not "capable of such instant and unquestionable demonstration as to defy dispute." See MPEP §2144.03; citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961).

In the instant rejection, the Examiner fails to provide any documentary evidence in support of the conclusion that the frame lock mechanism of Murphy serves the same purpose as Appellant's claimed lockable image capture system. In particular, Appellant's claims provide that a purpose of the lockable image capture system is to prevent image capture until after the image capture system is unlocked by sending an authorization to the image capture system across a distributed network (Claim 20). In addition, access to the image data is prevented by a local user until authorization from a remote node on the distributed network is received (Claim 23). In contrast, Murphy teaches that the digital frames recorded and stored by the system may be viewed at any time. See Murphy, col. 15, lines 5-20. Murphy teaches that it is only downloading which is prevented by the lock mechanism. See Murphy, col. 15, lines 5-20. Thus, the lock mechanism of Murphy does not serve the purpose of preventing image capture or access to the image without authorization as required by the claimed lockable image capture system. Thus, for at least the reason that it is not instantly apparent that the lock mechanism of Murphy serves the

same purpose as Appellant's claimed locking system, the Examiner has not shown either the references themselves or Official Notice teach or suggest Appellant's claimed lockable image capture system

In view of the foregoing, it is respectfully requested that the rejection to the claims on this basis be overturned.

CONCLUSION AND RELIEF

Accordingly, it is submitted that the rejections of Claims 1-30 based on 35 U.S.C. §103 be overturned.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated: February 17, 2006

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CERTIFICATE OF MAILING:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief-Patents, Commissioner for Patents, P.O. Box 1450, Virginia, VA 22313-1450, on February 17, 2006.

Jean Svoboda February 17, 2006